

# ALASKA PROFESSIONAL HUNTERS ASSOCIATION, INC.

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## **Electronic Submission**

To:

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From:

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RE: **Comments on Shoreline II Outfitter/Guide Draft Record of Decision**

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## **Summary**

The Alaska Professional Hunters Association (APHA) appreciates the amount of time, effort and consideration Tongass National Forest (TNF) leadership and staff has invested in updating *Shoreline Outfitter/Guide*. The *draft Record of Decision for Shoreline II Outfitter/Guide* will be referred to below as "*Shoreline II*" or the "*draft ROD*." APHA provides the following comments on the *draft ROD*.

APHA is pleased that the *draft ROD* clearly defers to state wildlife management authority while offering a necessary niche allocation of use days our members can rely on in the "late spring" and "fall" seasons. APHA supports state wildlife management, while advocating for use day allocations that ensure a viable hunting guide industry long into the future. APHA appreciates these policy directions. However, APHA is troubled and concerned by a myriad of unanswered questions that the proposed transition to a "prospectus/concession" permit system pose to the industry. Given APHA's experience thus far working with the TNF on the

*draft ROD*, we are confident that our objections and the discussion points housed within these comments will lead to more collaboration and an improved *final ROD*.

### **Alaska's Hunting Guides- SE Alaska Communities of Residence- Rural Economy**

APHA commissioned its first socioeconomic report with the McDowell Group in 2014, titled "*Economic Impacts of Guided Hunting in Alaska*." More recently (2017), APHA partnered with SCI to add to and update the McDowell's 2014 work. "*The Economic Importance of Hunters Visiting Alaska; Alaska's Guided Hunting Industry 2015*" provides new information on funding for conservation that our visiting clients contribute to wildlife management. A copy of this report will be provided to TNF upon submission of these objections.

Guiding hunters is primarily an activity that occurs in rural areas of Alaska. As such we asked McDowell to document communities of residence for Alaska's hunting guides.

See tables below:

<ul style="list-style-type: none"><li>• \$87.2 Million total economic output (2015)</li></ul>	<ul style="list-style-type: none"><li>• 52.5 Million new dollars to Alaska (2015)</li></ul>
<ul style="list-style-type: none"><li>• More than 50% economic benefits occur in <u>rural</u> areas (2012, 2015)</li></ul>	<ul style="list-style-type: none"><li>• 1,550 people directly employed, total employment with multipliers; 2,120 (2015)</li></ul>
<ul style="list-style-type: none"><li>• 89% Active Guides are AK Residents (2012)</li></ul>	<ul style="list-style-type: none"><li>• Visiting hunters (guided &amp; non-guided) purchase 13% of total Alaska hunting licenses (2015)</li></ul>
<ul style="list-style-type: none"><li>• Guided hunters are approx. 3% of total hunters in the field (2015)</li></ul>	<ul style="list-style-type: none"><li>• Visiting hunters (guided &amp; non-guided) contribute 72% of total revenue to the ADFG wildlife conservation fund (2015)</li></ul>

### **South East Alaska Communities of Residence- Registered Hunting Guides**

**The McDowell Report 2014) explains that the registered hunting guides in Southeast Alaska reside in the following communities**

Juneau/Auke Bay/Douglas (18), Sitka (13), Haines (5), Hoonah (5), Ketchikan (5), Petersburg (5), Gustdavis (4), Klawock (2), Elfin Cove (1), Thorne Bay (2), Yakutat (2), Wrangell (2)

Guiding hunters is part of the social and economic fabric of the small communities that are South East Alaska. APHA asserts that the TNF should have a vested interest in promoting

healthy and sustainable hunting guide businesses. APHA is the only group advocating on behalf of the regions hunting guides. APHA's standing is informed and important.

## **Selected Alternative**

### **Standing to Object-**

APHA has standing to "object" to the *draft ROD* having submitted previous written comments dated, April 25<sup>th</sup>, 2016.

*"Individuals or organizations who submitted specific written comments regarding the proposed project either during scoping or other designated opportunity for public comment in accordance with 36 CFR 218.5(a) may file objections to this draft Decision"*

### **Allocated Use Days-**

APHA supports the draft ROD's proposed allocation of use days. APHA further supports and agrees with the rationale for breaking up the use day allocations into four periods: early spring, late spring, summer, fall and winter.

Guiding hunters is only possible with healthy and sustainable populations of animals. Bears are sensitive to the disturbance caused by large groups attempting to view them during their spring mating season and during the end of the fish runs in the fall time. These large groups can be "nature tours," wildlife viewing walks etc. Critical spring habitats are the meadows and estuaries or the "shoreline." Critical fall habitats are the mouths of rivers and the first mile or so of drainages where salmon occur. As hunters our members understand the importance keeping a small footprint on the land and respecting bears during these critical times. While the "late spring" and "fall" periods coincide with State's bear hunting season, hunting is done usually by two people in a pair. Hunters are cautious not to disturb animals unnecessarily while clients experience the tranquil and pristine wilderness. Guiding hunters is the most ecologically sustainable commercial use during the "late spring" and "fall" periods. APHA objects to any attempt to change the *draft ROD's* allocated use days during the "late spring" and "fall" periods to high impact commercial uses.

### **Number of Guided Brown Bear Hunts-**

APHA supports the *draft ROD's* deference to ADFG's Unit 4 Brown Bear Management Strategy (BBMS, 2000) where the number of hunts are in question. APHA objects to any departure from the Unit 4 BBMS, unless the BBMS is updated in the future and APHA is a party to the new, agreed upon management strategy.

## **Change in Ownership-**

APHA appreciates the *draft ROD's* proposal to rescind the "1/3 holdback" of permits when a change of ownership occurs. APHA agrees that the original intent of the "1/3 holdback" has been accomplished and it is no longer necessary.

## **Number of Register Guides-**

APHA supports the draft ROD's deference to the Unit 4 BBMS recommended total number of registered guides.

## **Competitive Interest and Prospectus:**

### Introduction:

*Shoreline II Outfitter/Guide* proposes a radical change to the administration of the areas limited number hunting guide permits. Since late 2015, APHA has worked to inform and educate its members (and the region's guides who are not its members) about the prospectus system contemplated in this proceeding. By far the most contentious portion of the draft ROD is the proposal to sunset all the existing guide permits in 2023 and reissue them through a competitive prospectus process. Guides currently holding permits almost unanimously oppose this direction based on a variety of legitimate concerns about destabilizing a process that is working for them. Some guides that are currently operating in the area recently participated in a "change of ownership" while others have held a land use permit in the region prior to the first Shoreline I. Based on the feedback from our members in the region and our experience across the state with other federal land managers, we agree that a prospectus type system needs to be approached with extreme caution.

### Objection:

APHA objects to the sunset and total reissuance of all the existing hunting guide permits administered by Shoreline EIS via an undefined prospectus in 2023. APHA has no objection to use of a prospectus to award unallocated areas/hunts where there is no current permit holder and a competitive interest shown by two or more guides.

### Legal Concerns:

APHA's members who hold special use permits (special use authorizations) in Tongass are generally opposed to adoption of a prospectus system that could result in their application for permit renewal being denied (due to award of the opportunity to someone else) even though they are in compliance with all applicable laws and regulations governing their permitted guiding operation. As explained below, Forest Service regulations preclude

denying a renewal to a compliant operator where the existing permit has language providing for renewal and the permit holder is in compliance with applicable rules.

This matter is addressed in the Forest Service's Regulations, which discusses permit renewal, and provide that: "When a special use authorization provides for renewal, the authorized officer shall renew it where such renewal is authorized by law, if the project or facility is still being used for the purpose(s) previously authorized and is being operated and maintained in accordance with all the provisions of the authorization." 36 CFR 251.64(a) (emphasis added). Thus, if the existing permit holder is in compliance, and his or her permit "provides for renewal," then the Forest Service "shall" (not "may") grant the renewal.

Here, many and perhaps most Special Use Permits for Outfitting and Guiding issued by Tongass National Forest "provide[] for renewal," making this right of renewal applicable. We bring your attention to the October, 2009 version of Form FS-2700-4i (10/2009), which provides that: "This permit may be renewed upon expiration, provide the use is consistent with the applicable forest land and resource management plan, applicable laws and regulations, and the term of this permit, and the holder has performed satisfactorily under this permit, as demonstrated by acceptable annual performance reviews." Form FS-2700-4i, Section I.D (10/2009). In providing that the permit "may be renewed," those permits with this or similar stock language "provide[] for renewal."

This conclusion is buttressed by the references in the permit form to renewal being contingent on whether the permit holder has "acceptable annual performance reviews." Form FS-2700-4i, Section I.D (10/2009). That provision strongly implies that permit holders who do have acceptable annual performance reviews are not going to suffer denial of a renewal just because someone else has submitted an application for the same opportunity that the Forest Service believes might be superior in some way. The only language in the stock permit form that arguably cuts the other way is a statement later in Section I.D. of the form that whether to grant renewal is in the "discretion" of the Forest Service. It may be true, as a general matter that the Forest Service has discretion whether to renew permits. However, the Service must follow its own regulations in exercising that discretion, and adopted regulations published in the CFR are a higher legal authority than permit forms, and so must govern in case the two are in conflict. Here, the Forest Service in an adopted regulation, 36 CFR 251.64(a), has limited its discretion by committing that it "shall" grant renewals to compliant operators. To comply with this regulation, the Forest Service should withdraw the plans to use prospectuses in any situation where a competitive award could deny renewal to a compliant guide who is an existing permit holder with acceptable annual performance reviews.

#### State/Federal Cooperation:

It is absolutely essential and necessary that the state and federal government cooperate in a transparent manner to develop a fair prospectus system. Both the National Wildlife Refuge System and the National Park Preserves in Alaska administer successful hunting

guide concession programs that are awarded via competitive prospectus. Alaska's Department of Natural Resources has a Guide Concession Program ready to implement given interest, all that is needed is a small amount of funding. Alaska is also the resource manager while regulating hunting guides professional licenses. APHA recommends that the TNF draw on the collective experience of other land managers with hunting guide concessions to develop a program that incorporates the best aspects of each process. APHA has considerable expertise and employs knowledgeable professional staff that can assist in this development. APHA requests a seat at the table during the development of any prospectus system to be applied and administered by *Shoreline II Outfitter/Guide*. APHA objects to the TNF developing a prospectus without guide involvement.

#### Resource Stewardship:

While APHA is concerned about the potential for destabilizing SE Alaska guide business with a poorly planned and implemented prospectus process, we see limiting the numbers of guides permitted in the area as essential to resource stewardship and wildlife conservation. APHA is committed to working with the TNF, the State and other stakeholders to develop a fair and legally defensible area system that is ecologically, economically and socially sustainable.

#### Professional Hunting Guide Use Requires Special Considerations:

##### *Licensure:*

Non-resident hunters are required by Alaska law to be accompanied by a licensed hunting guide to pursue brown/grizzly bears, dall sheep and rocky mountain goats in Alaska. The State of Alaska's Big Game Commercial Services Board (BGCSB) oversees the licensure of hunting guides and transporters. The BGCSB also investigates complaints and brings disciplinary action against violators.

##### *Guiding as a Lifestyle:*

Becoming a Registered Hunting Guide is difficult and requires a lengthy apprenticeship working under a Registered or Master Guide/Outfitter. A person cannot simply go to school or take a course and become licensed. This system of apprenticeship has developed over many decades in response to the public's demand that hunting guides be competent and highly skilled in their craft. As with any specialized craft or trade, guiding hunters becomes more than a job, it becomes a lifestyle.

##### *Selection of the "Most Qualified":*

Permits awarded by prospectus seek to award permits to the most qualified or the "best fit" for a particular opportunity. The awarding process always becomes subjective at some point

because of the high standards and decades of experience guides who will compete for permits. It becomes very difficult to rank one applicant over another on experience or “time in the field” alone. Prospectuses pick winners and losers; Alaska’s guides are very competent and qualified as a group.

#### *New Entrants:*

Alaska’s constitution mandates that resources be held in public trust, with common ownership. Any prospectus must fairly consider new applicants or entrants while balancing other important concerns such as experience, knowledge of the area and history of compliance. APHA cautions the TNF that a well drafted prospectus must provide an avenue for new entry while not simply becoming a mechanism for turning over permits in good standing. The *draft ROD* does not address “new entry” and therefore APHA is extremely uncomfortable and concerned by stated the Service’s intent to transition to prospectus permit award.

#### *Social Aspects:*

Hunting guides endure an inordinate amount of scrutiny from other hunters, non-hunters, visitors, their clients, other guides and local communities. The ability for a guide to foster healthy relations with other users and avoid unnecessary conflict is important to the future of the industry. Hunting guides capture the imagination and fascination of the public, to the point of becoming heroes and villains. Guides rescue bear cubs out of dens and rescue other hunters. Guides are subject to an extraordinarily complex regulatory system in which federal law overlays state laws. Despite the best of intents, guides (or their clients) can make mistakes that do not in any way suggest that the guide should be disqualified from holding future permits. Any prospectus used to award permits should be designed with consideration to unique social issues that surround guiding hunters.

#### *SE Alaska is Unique:*

*Shoreline II Outfitter/Guide* encompasses a vast and unique wild resource. The “ABC” Islands are home to a world class and precious population of Brown Bears. Northern GMU 1 has healthy populations of both black and brown bears, deer, mountain goats and some moose. APHA’s members and the other guides in the region work hard to offer world-class opportunities and accommodations in a world-class wilderness. Our members invest large sums of money and time in their boats and lodges. These investments are necessary for safety, success and competitiveness with other regions. Prospectus applications need to be carefully evaluated to ensure that an applicant has the necessary assets to provide hunting opportunity that maximize the unique nature of the area. Given the Service’s high turnover of permitting officers, due to duty station rotation, an unfortunate situation could easily develop where concession the competition and award cycle correspond to newly arrived, “fresh of the boat” permitting officers. The general public, the animals, wilderness and small communities ultimately demand that the award process address the unique nature, maritime challenges and values of SE Alaska. A prospectus system will likely fall short of

serving the best interest of the public if these concerns are not addressed. We feel strongly that a nexus between those with knowledge of the region and those knowledgeable about permitting, generally, will need to be set into policy and practice.

*Prospectus Summary:*

APHA sees the potential that an abrupt shift to hunting guides prospectuses could completely destabilize hunting guide businesses in northern SE Alaska. The TNF needs to roll up its sleeves and reach out to the state, Alaska Region USFWS, Alaska Region of the National Park Service and APHA to develop a prospectus process that is tailored to hunting guide use specifically. Merely deciding that prospectus permit awards are necessary and then implementing some generic application process is unacceptable. Guide accompaniment for non-resident brown bear hunters is mandated by Alaska law, a limited number of guide permits are authorized; non-residents have reason to expect honest, safe and knowledgeable operators. APHA is firm that a separate planning process begin to develop a hunting guide prospectus in the project area.

**Areas to be Closed to Guiding:**

APHA is concerned that the *draft ROD* improperly and illegally proposes to close guiding opportunity for Sitka blacktail deer on Admiralty Island. APHA is aware that other areas, outside the project area discussed herein, are also improperly closed to guiding. APHA is unaware of any reason, social, biological or for public safety that could possibly justify these guide exclusion zones. In fact, guiding hunters has demonstrated to be compatible with communities across the project area and in fact the region and the state. The proposed exclusions and preemptive closure of guiding opportunity is wholly inappropriate. Instead of preemptive closures, the Service should take steps to develop a process to provide for some opportunity (perhaps via prospectus) that addresses whatever concerns they may have. What is most troubling to us is that local residents are being barred from accessing a renewable resource that provides sustenance both as food security and cash by what amounts to an arbitrary policy that effectively states- "guiding hunters is not nor will it ever be compatible here." APHA is adamant; guide exclusion zones are an unwarranted taking of opportunity that effectively contravenes one of the central tenants of ANILCA: conservation units are "open until closed," not "closed until open."